

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS ANDRE GARNER,

Plaintiff,

v.

RICK HILL, *et al.*,

Defendant

Case No. 2:23-cv-00494-WBS-JDP (PC)

SCREENING ORDER FINDING THAT
THE FIRST AMENDED COMPLAINT
FAILS TO STATE A COGNIZABLE
CLAIM AND GRANTING ONE FINAL
OPPORTUNITY TO AMEND

ECF No. 14

Plaintiff, a state prisoner proceeding *pro se*, brings this case against Warden Hill and three “Doe” defendants, alleging that all of them violated his Eighth Amendment rights by failing to take adequate precautions to protect him from the Covid-19 virus. ECF No. 14. This is plaintiff’s second complaint; I found that the first failed to state a claim because it did not make specific allegations that, taken as true, demonstrated any defendant’s deliberate indifference. ECF No. 9 at 3-4. The current complaint suffers from the same deficiency. I will give plaintiff one final opportunity to amend before recommend this action be dismissed for failure to state a claim.

Screening Order

I. Screening and Pleading Requirements

A federal court must screen a prisoner's complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, "'a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

1 **II. Analysis**

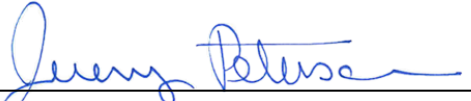
2 As before, plaintiff alleges that Warden Hill and the three “Doe” defendants violated his
 3 Eighth Amendment rights by failing to protect him from contracting the Covid-19 virus. ECF
 4 No. 14 at 3. His allegations are bereft of specifics; I cannot tell what—in plaintiff’s view—
 5 defendants did or failed to do. Plaintiff comes closest to making such allegations in claiming that
 6 defendants allowed infected prisoners to have contact with their uninfected peers. *Id.* at 7. He
 7 does not, however, allege how or when this contact happened, whether this “allowance” was
 8 intentional or the result of inadequate social distancing policies, or how and when defendants
 9 knew about different instances of intermingling between the sick and the well. It may be that
 10 some of that information can be gleaned through the approximately fifty-pages of prison
 11 documents that plaintiff has appended to the complaint. I decline, however, to read those
 12 documents and infer what has not been explicitly stated in the complaint. I will offer plaintiff one
 13 final opportunity to amend. He must make specific allegations against each defendant that
 14 explain how they acted with deliberate indifference. Broad allegations of vague insufficiencies
 15 will not, as my previous screening order explained, suffice to pass screening.

16 Plaintiff is advised that the amended complaint will supersede the current complaint. *See*
 17 *Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). The amended
 18 complaint should be titled “Second Amended Complaint” and refer to the appropriate case
 19 number.

20 Accordingly, it is ORDERED that:

- 21 1. Within thirty days from the service of this order, plaintiff may file an amended
 22 complaint. If he does not, I will recommend this action be dismissed for failure to state a claim.
 23 2. The Clerk of Court shall send plaintiff a section 1983 complaint form with this order.
 24 IT IS SO ORDERED.

25 Dated: November 28, 2023

26 
 27 JEREMY D. PETERSON
 28 UNITED STATES MAGISTRATE JUDGE

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